SUPREME COURT, U.S.
FILED
MAR 17 2004
OFFICE OF THE CLERK

No. 03-1027

In the Supreme Court of the United States

DONALD H. RUMSFELD, SECRETARY OF DEFENSE,
PETITIONER

v.

JOSE PADILLA AND DONNA R. NEWMAN, AS NEXT
FRIEND OF JOSE PADILLA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: JAN. 16, 2004
CERTIORARI GRANTED: FEB. 20, 2004

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

02-CV-0445-MBM

JOSE PADILLA, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT;
GEORGE W. BUSH, DONALD H. RUMSFELD,
M. A. MARR, DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
06/12/2002		Magistrate Judge James C. Francis is so designated. (jol) (Entered: 06/14/2002)
06/12/2002	2	ORDER, petitioner has submitted a petition for writ of habeas that contains material pertaining to a grand jury proceeding which will be filed under seal. The parties have agreed that the attached redacted copy of the petition may be publicly filed. Accordingly, the Clerk of the Court is directed to open this matter as a new civil

DATE	DOCKET NUMBER	PROCEEDINGS
		action and serve a copy of this order and the redacted copy of the petition on the Secretary of Defense in care of Paul W. Cobb, Jr., Deputy General Counsel, Department of Defense, Pentagon, Room 3C975, 1600 Defense Pentagon, Washington, D.C. 20310-1600. As agreed to by the parties the government will file a motion to dismiss or transfer the petition by 6/21/02. Answering papers are to be served by 7/2/02. A reply may be served by 7/9/02. Copies mailed via certified mail #7000-1530-0005-4709-9705 on 6/14/02. (signed by Chief Judge Michael B. Mukasey on 6/12/02). (ph) Modified on 06/14/2002 (Entered: 06/14/2002)
06/12/2002	1	PETITION for writ of habeas corpus pursuant to 28 USC 2241. (jol) Modified on 06/26/2002 (Entered: 06/26/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
06/17/2002	3	SEALED DOCUMENT placed in vault. (js) (Entered: 06/18/2002)
06/20/2002	4	AMENDED PETITION FOR Writ of Habeas Corpus by Jose Padilla amending [1-1] petition. (ae) (Entered: 06/28/2002)
06/20/2002	5	AFFIDAVIT OF SERVICE of Amended Petition for Writ of Habeas Corpus as to U.S.A. by hand delivery c/o U.S. Attorney's officer at One Saint Andrew's Plaza, w/enclosed sealed envelope addressed to the following people: Eric Bruce, Esq., Asst. U.S. Atty.; John Ashcroft, Atty. General; George W. Bush, President of the U.S.; Donald Rumsfeld, Secretary of Defense; Commander M.A. Marr; Co[n]-solidated Naval Brig on 6/20/02. Answer to Amended Petition for Writ of Habeas Corpus due on 7/10/02 for U.S.A. (ae) (Entered: 06/28/2002)
06/26/2002	6	NOTICE OF MOTION by U.S.A.; for an order to dismiss the amended petition for writ of habeas corpus. No Return Date (Filed in the night deposit on

DATE	DOCKET NUMBER	PROCEEDINGS
		6/26/02 at 7:18 p.m.) (ae) Modified on 06/28/2002 (Entered: 06/27/2002)
06/26/2002	7	ORDER, Deadline for filing of the govt's motion to dismiss or transfer the amended petition by 6/26/02; Response to motion deadline 7/11/02; Reply to response to motion deadline 7/18/02 (signed by Chief Judge Michael B. Mukasey); Copies mailed. (cd) Modified on 06/28/2002 (Entered: 06/27/2002)
07/12/2002	8	NOTICE OF MOTION for leave to file Brief as Amici Curiae, by NYS Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers ; Return Date 7/22/02 at 9:30; attached is the prospective brief (cd) Modified on 07/16/2002 (Entered: 07/16/2002)
07/18/2002	9	REPLY by U.S.A. in support of their: [6-1] motion for an order to dismiss the amended petition for writ of habeas corpus. Received in night deposit box on 7/18/02 at 10:55 p.m. (yv) Modified on 07/22/2002 (Entered: 07/22/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
08/12/2002	10	ORDER, for Paul D. Clement to appear pro hac vice for respondent ; Deadline for filing of respondent motion (merits) by 8/23/02; Response to motion deadline 9/13/02; Reply to response to motion deadline 9/20/02 (signed by Chief Judge B. Mukasey); Copies mailed; forwarded orig. doc. to the Attorney Admissions Clerk (cd) Modified on 08/14/2002 (Entered: 08/13/2002)
08/27/2002	12	RESPONSE by U.S.A. Re: [4-1] amended petition. Received in night deposit box on 8/27/02 at 7:53 p.m. (yv) (Entered: 09/04/2002)
09/03/2002	11	Transcript of record of proceedings before Chief Judge Michael B. Mukasey for the date(s) of July 31, 2002. (jw) (Entered: 09/03/2002)
09/19/2002	15	Letter filed by U.S.A. addressed to Clerk of Court from Paul D. Clement, dated 9/19/02, re: Mobbs Declaration. Mobbs Declaration attached. (dle) (Entered: 09/30/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
09/24/2002	13	ORDER, the American Civil Liberties Union is granted leave to file an amicus curiae brief in this matter. The Clerk of the Court is directed to receive and file such a brief (signed by Chief Judge Michael B. Mukasey); (cd) (Entered: 09/26/2002)
09/26/2002	14	ORDER; on application by petitioner, and consent of respondent, the statement in the 5/8/02, affidavit in support of the material witness warrant herein to the effect that petitioner indicated he was unwilling to become a martyr is unsealed. (signed by Chief Judge Michael B. Mukasey) (Copy forwarded to Sealed Records Clerks) (sn) Modified on 09/26/2002 (Entered: 09/26/2002)
09/26/2002	17	BRIEF by Jose Padilla in support of [4-1] amended petition, and in response to [6-1] motion for an order to dismiss the amended petition for writ of habeas corpus. Received in the night deposit box on 9/26/02 at 6:35 p.m. (sb) Modified on 10/03/2002 (Entered: 10/03/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
09/26/2002	18	BRIEF submitted on behalf of the American Civil Liberties Union, New York Civil Liberties Union and Center for National Security Studies as Amici Curiae. (sb) (Entered: 10/03/2002)
09/27/2002	16	SUPPLEMENTAL BRIEF OF AMICI CURIAE by The N.Y.S. Assoc. of Criminal Defense Lawyers and the Natl. Assoc. of Criminal Defense Lawyers (pl) (Entered: 10/02/2002)
10/11/2002	19	REPLY by U.S.A. to response to [6-1] motion for an order to dismiss the amended petition for writ of habeas corpus; (docmt received in night dep. at 6:10 p.m. on 10/11/02) (djc) (Entered: 10/22/2002)
10/21/2002	20	Letter filed by Jose Padilla addressed to Judge Mukasey from Donna R. Newman, dated 10/16/02, re: petitioner's status as an enemy combatant (cd) (Entered: 10/24/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
10/21/2002	21	ORDER; At the court's request, the parties will submit further briefs on the issues of petitioner's right to counsel and the propriety of the government's sealed affidavit, and the government will address, to the extent it wishes, the issues raised in petitioner's sur-reply submission, by 10/28/02. The parties may submit replies by 10/31/02. (signed by Chief Judge Michael B. Mukasey); (kg) (Entered: 10/24/2002)
10/22/2002	23	Letter filed by Jose Padilla addressed to Judge Mukasey from Andrew G. Patel, Esq., dated 8/28/02, re: requesting that the Court not yet consider what the Government describes as "a classified ver[si]on of the Mobbs Declaration . . ." (kw) (Entered: 10/30/2002)
10/22/2002	24	Letter filed by U.S.A. addressed to Judge Mukasey from Paul D. Clement, dated 8/29/02, re: in response to defense counsel's 8/28/02 letter. (kw) (Entered: 10/30/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
10/22/2002	25	Letter filed by Jose Padilla addressed to Judge Mukasey from Andrew G. Patel, Esq., dated 9/6/02, re: in reply to the Government's letter dated 8/29/02. (kw) (Entered: 10/30/2002)
10/28/20022	22	ORDER; petitioner will serve the government 10/28/02, by electronic mail with the brief required by the Court's 10/21/02 Order, and petitioner will file that brief with the Court on 10/29/02, so that he can include therewith a document cited in the brief but not yet received by petitioner's counsel. This procedure will enable the government to receive petitioner's arguments and respond to them, as provided in the 10/21/02 Order, by 10/31/02. (signed by Chief Judge Michael B. Mukasey) (sn) (Entered: 10/28/2002)
10/28/2002	26	RESPONSE to this Court's 10/21/02 Order by U.S.A. (pl) (Entered: 10/30/2002)
10/29/2002	27	SUPPLEMENTAL MEMORANDUM OF LAW by Jose Padilla re: appointment of counsel (cd) (Entered: 10/31/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
11/01/2002	28	ORDER, The caption of this action is amended to read: Jose Padilla v. George W. Bush, Donald Rumsfeld, and Commander M.A. Marr. The parties' request to extend by one day the deadline for reply papers is granted, and those papers will be submitted by 11/1/02. (signed by Chief Judge Michael B. Mukasey) (sb) (Entered: 11/04/2002)
11/01/2002	29	RESPONSE by U.S.A. Re: [27-1] memorandum (cd) (Entered: 11/06/2002)
11/01/2002	30	SUPPLEMENTAL REPLY MEMORANDUM by Jose Padilla. (sac) (Entered: 11/06/2002)
12/04/2002	31	OPINION and ORDER #87780; Newman may pursue this petition as next frie[n]d to Padilla, and the gover[n]me[n]t's motion to dismiss for lack of standing therefore is denied; Secretary Rumsfeld is the proper respondent in this case, and th[i]s court has jurisdiction over him, as well as jurisdiction to hear this case, and the government's motion to dismiss for lack of jurisdiction is

DATE	DOCKET NUMBER	PROCEEDINGS
		denied; the Government's motion to transfer to South Carolina, is denied; the President is authorized under the Constitution and by law to direct the military to detain enemy combatants in the circumstances present here, such that Padilla's detention is not per se unlawful; the Court will not at this time use the document submitted in camera to determine whether the government has met the standard as stated in this memorandum opinion; the parties will discuss and arrange the conditions for defense counsel's consultation with Padilla and will attend a conference on 12/30/02 at 9:15 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, NY, NY 10007, to report on the results of those discussions and arrangements, and to schedule further proceedings in this case; (signed by Chief Judge Michael B. Mukasey); (djc) (Entered: 12/04/2002)
2/06/2002	32	Transcript of record of proceedings before Chief Judge Michael B. Mukasey for the date(s) of

DATE	DOCKET NUMBER	PROCEEDINGS
		10/21/02. (dt) (Entered: 12/06/2002)
12/26/2002	33	ORDER, the conference scheduled in the case is adjourned to 1/15/03 at 9:15 a.m. in Room 21B of the US Courthouse, 500 Pearl Street, New York, NY 10007; Respondents are to serve their written submission by 1/8/03. If necessary, the Court will establish at the 1/15/03 conference a date by which petitioner is to respond to that submission. (signed by Chief Judge Michael B. Mukasey); (kw) (Entered: 12/27/2002)
01/09/2003	34	ORDER, on respondents' unopposed application on 1/8/03 the time in which respondents are to serve their written submission is extended to 1/9/03. The parties are reminded that a conference will be held in the case on 1/15/03 at 9:15 a.m. in Room 21B. (signed by Chief Judge Michael B. Mukasey); (cd) Modified on 01/14/2003 (Entered: 01/13/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
01/09/2003	35	NOTICE OF MOTION by Donald H. Rumsfeld, M. A. Marr for reconsideration of [31-1] order Newman may pursue this petition as next frie[n]d to Padilla, and the gover[n]me[n]t's motion to dismiss for lack of standing therefore is denied, [31-2] order Secretary Rumsfeld is the proper respondent in this case, and th[i]s court has jurisdiction over him, as well as jurisdiction to hear this case, and the government's motion to dismiss for lack of jurisdiction is denied, [31-3] order the Government's motion to transfer to South Carolina, is denied, [31-4] order the President is authorized under the Constitution and by law to direct the military to detain enemy combatants in the circumstances present here, such that Padilla's detention is not per se unlawful, [31-5] order the Court will not at this time use the document submitted in camera to determine whether the government has met the standard as stated in this memorandum opinion, [31-6] order the

DATE	DOCKET NUMBER	PROCEEDINGS
		parties will discuss and arrange the conditions for defense counsel's consulta[ti]ton with Padilla and will attend a conference on 12/30/02 at 9:15 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, NY, NY NY, NY 10007, to report on the results of those discussions and arrangements, and to schedule further proceedings in this case, [31-7] order. Return Date not indicated. Received in night deposit box on 1/9/03 at 9:23 p.m. (yv) (Entered: 01/14/2003)
01/13/2003	36	RESPONSE by Jose Padilla to [35-1] motion for reconsideration of [31-1] order Newman may pursue this petition as next frie[n]d to Padilla, and the gover[n]-me[n]t's motion to dismiss for lack of standing therefore is denied, [31-2] order Secretary Rumsfeld is the proper respondent in this case, and th[i]s court has jurisdiction over him, as well as jurisdiction to hear this case, and the government's motion to dismiss for lack of jurisdiction is de

DATE	DOCKET NUMBER	PROCEEDINGS
		nied, [31-3] order the Govern motion to transfer to South Carolina, is denied, [31-4] order the President is authorized under the Constitution and by law to direct the military to detain enemy combatants in the circumstances present here, such that Padilla's detention is not per se unlawful, [31-5] order the Court will not at this time use the document submitted in camera to determine whether the government has met the standard as stated in this memorandum opinion, [31-6] order the parties will discuss and arrange the conditions for defense counsel's consulta[ti]ton with Padilla and will attend a conference on 12/30/02 at 9:15 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, NY, NY NY, NY 10007, to report on the results of those discussions and arrangements, and to schedule further proceedings in this case, [31-7] order (sac) (Entered: 01/15/2003)
01/15/2003	37	AFFIRMATION of Andrew G. Patel by Jose Padilla. (db) (Entered: 01/22/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
01/21/2003	38	ORDER, respondents are to serve answering papers to petitioner's cross-motion to strike their motion for reconsideration; respondents' Reply to Response to Motion set for 5:00 p.m. on 1/22/03 re: [35-1] motion for reconsideration of [31-1] order Newman may pursue this petition as next frie[n]d to Padilla, and the gover[n]ment's motion to dismiss for lack of standing therefore is denied, [31-2] order Secretary Rumsfeld is the proper respondent in this case, and th[i]s court has jurisdiction over him, as well as jurisdiction to hear this case, and the government's motion to dismiss for lack of jurisdiction is denied, [31-3] order the Government's motion to transfer to South Carolina, is denied, [31-4] order the President is authorized under the Constitution and by law to direct the military to detain enemy combatants in the circumstances present here, such that Padilla's detention is not per se unlawful, [31-5] order the Court will not at this time use the

DATE	DOCKET NUMBER	PROCEEDINGS
		document submitted in camera to determine whether the government has met the standard as stated in this memorandum opinion, [31-6] order the parties will discuss and arrange the conditions for defense counsel's consulta[ti]on with Padilla and will attend a conference on 12/30/02 at 9:15 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, NY, NY NY, NY 10007, to report on the results of those discussions and arrangements, and to schedule further proceedings in this case, [31-7] order. A reply as to the cross-motion may be served by 5:00 p.m. on 1/29/03. (signed by Chief Judge Michael B. Mukasey); (kw) (Entered: 01/23/2003)
01/22/2003	39	REPLY MEMORANDUM by U.S.A., George W. Bush, Donald H. Rumsfeld, M. A. Marr in support of [6-1] motion for an order to dismiss the amended petition for writ of habeas corpus. Received in the night deposit box on 1/22/03 at 5:14 p.m. (sb) (Entered: 01/28/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
01/29/2003	41	REPLY by Jose Padilla submitted in further support of peti-t[i]oners' motion to strike respondent's motion for reconsideration in part ("motion") and/or deny respondent's motion on its merits. (jco) (Entered: 02/04/2003)
01/30/2003	40	ORDER, the caption of this case is amended as set forth in this Order; Petitioner is to file and serve the "written response" referred to in footnote 1 on page 1 of his reply memorandum by 5:00 p.m. on February 5, 2003; (signed by Chief Judge Michael B. Mukasey); (djc) (Entered: 02/03/2003)
02/06/2003	42	ORDER, that on application by petitioner on 2/5/03, the time in which petit[i]oner is to file and serve the "written response" referred to in footnote 1 on page 1 of his reply memorandum is extended to 5:00 p.m. on 2/7/03. (signed by Chief Judge Michael B. Mukasey). (tp) (Entered: 02/07/2003)
02/07/2003	43	MEMORANDUM OF LAW by Jose Padilla re: Some Evidence. (laq) (Entered: 02/13/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
02/11/2003	44	BRIEF of AMICI CURIAE by The New York State Association of Criminal Defense Lawyers and The National Association of Criminal Defense Lawyers. (db) (Entered: 02/24/2003)
03/03/2003	45	Transcript of record of proceedings before Chief Judge Michael B. Mukasey for the date(s) of January 15, 2003. (dt) (Entered: 03/03/2003)
03/11/2003	46	OPINION AND ORDER #03/11/03, granting [35-1] motion for reconsideration of [31-1] order Newman may pursue this petition as next frie[n]d to Padilla, and the gover[n]ment's motion to dismiss for lack of standing therefore is denied, [31-2] order Secretary Rumsfeld is the proper respondent in this case, and th[i]s court has jurisdiction over him, as well as jurisdiction to hear this case, and the government's motion to dismiss for lack of jurisdiction is denied, [31-3] order the Government's motion to transfer to South Carolina, is denied, [31-4] order the President is authorized

DATE	DOCKET NUMBER	PROCEEDINGS
		under the Constitution and by law to direct the military to detain enemy combatants in the circumstances present here, such that Padilla's detention is not per se unlawful, [31-5] order the Court will not at this time use the document submitted in camera to determine whether the government has met the standard as stated in this memorandum opinion, [31-6] order the parties will discuss and arrange the conditions for defense counsel's consulta[ti]on with Padilla and will attend a conference on 12/30/02 at 9:15 a.m. in Courtroom 21B of the United States Courthouse, 500 Pearl Street, NY, NY NY, NY 10007, to report on the results of those discussions and arrangements, and to schedule further proceedings in this case, [31-7] order; that the parties will attend a conference at 9:15 a.m. on 3/27/03, in rm 21B, for the purpose of reporting on their consultations in the manner as stated in this Opinion and Order, any party wishing [to] apprise the

DATE	DOCKET NUMBER	PROCEEDINGS
		court in writing of any issues remaining after such consultations will do so by 5 p.m. on 3/25/03. (signed by Chief Judge Michael B. Mukasey); (pl) Modified on 03/13/2003 (Entered: 03/12/2003)
03/25/2003	47	Letter filed by Jose Padilla addressed to Judge Mukasey from Andrew G. Patel & Donna R. Newman, dated 3/24/03, re: the conditions involving the the meeting of persons Ms. Newman and Mr. Padilla. (db) (Entered: 03/26/2003)
03/25/2003	48	Letter filed by Jose Padilla addressed to Judge Mukasey from Donna R. Newman, dated 3/24/03, re: objection to respondents request for certification of appeal. (db) (Entered: 03/26/2003)
03/25/2003	49	Letter filed by U.S.A. addressed to Judge Mukasey from James B. Comey, dated 3/20/03, re: continual belief that Mr. Padilla poses danger to the national security of the United States. (db) (Entered: 03/26/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
03/31/2003	50	NOTICE OF MOTION by U.S.A., George W. Bush, Donald H. Rumsfeld, M. A. Marr for an order for certification for interlocutory appeal of the Court's 12/4/02 and 3/11/03 orders and for ar order for a stay of the proceedings pending resolution of the appeal. No Return Date. Received in the night deposit box on 6:46 p.m. (sb) (Entered: 04/01/2003)
04/03/2003	51	OPPOSITION by Jose Padilla re: [50-1] motion for an order for certification for interlocutory appeal of the Court's 12/4/02 and 3/11/03 orders, [50-2] motion for an order for a stay of the proceedings pending resolution of the appeal (pl) (Entered: 04/07/2003)
04/09/2003	52	OPINION AND ORDER #88333, granting [50-1] motion for an order for certification for interlocutory appeal of the Court's 12/4/02 and 3/11/03 orders; the opinions and orders entered in this case on 12/4/02 and 3/11/03 are deemed amended to include

DATE	DOCKET NUMBER	PROCEEDINGS
		the discussions set forth in this Opinion and Order. (signed by Chief Judge Michael B. Mukasey); (pl) (Entered: 04/10/2003)
05/01/2003	53	Transcript of record of proceedings before Chief Judge Michael B. Mukasey for the date(s) of 3/27/03. (pr) (Entered: 05/01/2003)
05/12/2003		Documents # 4,12,17 SENT TO THE USCA, ATT. AMY SMITH. (pr) (Entered: 05/12/2003)
05/16/2003	54	Notice that the record on appeal has been certified and transmitted to the U.S. Court of Appeals. (There is no Notice of Appeal filed in U.S. Di[s]trict Court, Filed 1292(b) in U.S. Court of Appeals. (dt) Modified on 05/16/2003 (Entered: 05/16/2003)
05/16/2003		by U.S.A., George W. Bush, Donald H. Rumsfeld, M. A. Marr, Indexed record on appeal files (03-2235) sent to the U.S.C.A. (dt) (Entered: 05/16/2003)
06/19/2003	55	SEALED DOCUMENT placed in vault. (js) (Entered: 06/19/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
06/20/2003	56	True Copy of Order from the USCA RE: Appellant petitions pursuant to 28 USC 1292(b), for leave to appeal the district court orders dated December 4, 2002 and March 11, 2003 and to expedite the interlocutory appeal if permitted. Appellee-cross appellant petitions, pursuant to 1292(b), for leave to appeal the portion of the district court order finding that the President had the authority to order the military to seize and detain Padilla as stated. ORDERED that the petitions are GRANTED AS STATED. It is further ORDERED that the motion to expedite the appeal is GRANTED. Opening briefs by both sides shall be filed no later than July 22, 2003. Response bri[e]fs by both shall be filed by no later than August 12, 2003. Reply bri[e]fs by both sides shall be filed by no later than September 1, 2003. Counsel are hereby advised that oral argument in this matter will be heard on a date set by the court no earlier than the week of October 12, 2003.

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFIED 6/11/03, 03-2235. MACKECHNIE, CLERK, USCA. (pr) (Entered: 07/02/2003)
07/16/2003	57	SEALED DOCUMENT placed in vault. (js) (Entered: 07/16/2003)
07/16/2003	58	SEALED DOCUMENT placed in vault. (js) (Entered: 07/16/2003)
08/04/2003	59	ORDER; because of the length of this case, petitioner's CJA attorneys, Donna Newman and Andrew Patel, may submit interim vouchers for representation of their client. Ms. Newman and Mr. Patel may be reimbursed for out-of-pocket expenses reasonable incurred to their representation. They are to incur no single expense item in excess of $150.00 without making an exparte application to the Clerk stating the nature of the expense, the estimated dollar cost, and the reason the expense is necessary to the representation. An application seeking such an approval may be filed in camera, if necessary. Recurring expenses such as telephone toll calls and photocopying which aggregate more

DATE	DOCKET NUMBER	PROCEEDINGS
		than $150.00 on one or more interim vouchers are not considered single expense requiring Court approval; (signed by Chief Judge Michael B. Mukasey); (djc) (Entered: 08/05/2003)
09/30/2003		Terminated documents 6-1, 8-1 pursuant to instructions of Chief Judge Mukasey as indicated on the CJRA report. (rag) (Entered: 10/14/2003)

UNITED STATES CIRCUIT COURT OF APPEALS

03-2235

JOSE PADILLA, DONNA R. FREEMAN, AS NEXT FRIEND OF JOSE PADILLA, PETITIONER-APPELLEE-CROSS-APPELLANT

v.

DONALD H. RUMSFELD, RESPONDENT-APPELLANT-CROSS-APPELLEE

DOCKET ENTRIES

DATE	PROCEEDINGS
4/21/03	Copy of notice of appeal and district court docket entries on behalf of Appellant USA, Appellant George W. Bush, Appellant Donald H. Rumsfeld, Appellant M. A. Marr filed. (COANRQ fed - hc ;fee wai) [03-2235]
4/21/03	Appellant USA, Appellant George W. Bush, Appellant

DATE	PROCEEDINGS
	Donald H. Rumsfeld, Appellant M. A. Marr motion to expedite appeal, to allow interlocutory appeal FILED (w/pfs). [2318802-2]
4/28/03	Letter dated 4/28/03 received from attorney Donna Newman stating that attorney Andrew Patel and her were appointed CJA attorney by the district court.
4/28/03	Appellee Jose Padilla motion to allow interlocutory appeal, to expedite appeal FILED (w/pfs). [2323376-2]
5/16/03	Record on appeal filed. (Original papers of district court.)
5/19/03	Letter sent to Appellee Jose Padilla, Appellant USA, Appellant George W. Bush, Appellant Donald H. Rumsfeld, Appellant M. A. Marr: informing parties that the record on appeal has been filed with this Court.
5/20/03	Record on appeal received in records room from team. (1 volume).
6/10/03	EXPEDITED case flag set.

DATE	PROCEEDINGS
6/10/03	Prisoner scheduling order #1 filed.
	Petitioners briefs and appendix due on 7/22/03, Respondents briefs due on 8/12/03. Reply briefs by both sides shall be filed by no later than September 1, 2003. Argument as early as week of 10/13/03. (SEE MOTION ORDER FILED 6/10/03)
6/11/03	Notice to counsel of order filed 6/10/3
6/11/03	Certified copy of the order of 6/10/03 issued to the district court.
6/11/03	Appellant petitions, pursuant to 28 U.S.C. &1219(b), for leave to appeal the district court orders dated December 4, 2002, and March 11, 2003 and to expedite the interlocutory appeal if permitted. Appellee-cross-appellant petitions, pursuant to &1292(b), for leave to appeal the portion of the district court order finding that the President had the authority to order the military to seize and detain Padilla as

DATE	PROCEEDINGS
	an unlawful combatant and that the Government need only present "some evidence" in support of its decision. Upon due consideration, it is ORDERED that the petitions are granted. Both parties have demonstrated that the district court orders involved controlling questions of law as to which there are substantial grounds for difference of opinion and that "an immediate appeal from the [district court] order may materially advance the ultimate termination of the litigation." See U.S.C. & 1292(b). It is further ORDERED that the motion to expedite the appeal is granted. Opening briefs by both sides shall be filed no later that July 22, 2003. Response briefs by both shall be filed by no later that August 12, 2003. Reply briefs by both sides shall be filed by no later than September 1, 2003. Counsel are hereby advised that oral argument in this matter will be heard on a date set by the Court no earlier than the week of October 13, 2003. (Before: RJM, JAC, Droney) (By:AH)

DATE	PROCEEDINGS
6/25/03	Certified copy of receipt returned from the district court.
	* * * * *
7/22/03	Appellant USA, Appellant George W. Bush, Appellant Donald H. Rumsfeld, Appellant M. A. Marr appendix filed w/pfs. .
7/22/03	Appellant USA, Appellant George W. Bush, Appellant Donald H. Rumsfeld, Appellant M. A. Marr brief FILED with proof of service. (shelves 60 & 65))
7/23/03	The CAPTION PAGE for this appeal has been AMENDED.
	* * * * *
7/23/03	Appellee Jose Padilla in 03-2235 brief RECEIVED.
	* * * * *
7/23/03	Appellee Jose Padilla in 03-2235 motion for leave to file oversized brief FILED (w/pfs). [2389486-1]
7/24/03	The CAPTION PAGE for this appeal has been AMENDED.
	* * * * *

DATE	PROCEEDINGS
7/28/03	Order FILED GRANTING motion for leave to file oversized brief [2389486-1] by Appellee Jose Padilla, endorsed on motion form dated 7/23/03. (AH)
	* * * * *
7/30/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 brief filed with proof of service.
7/30/03	Amicus Curiae American Bar Associa in 03-2235 brief filed with proof of service.
	* * * * *
7/31/03	Notice of appearance form on behalf of David W. Debruin in 03-2235, Esq., received. (Orig. to Calendar)
	* * * * *
7/31/03	Amicus Curiae American Civil in 03-2235, Amicus Curiae New York Civil Liber in 03-2235 brief filed with proof of service.
7/31/03	Amicus Curiae Experts on the Law in 03-2235 brief filed with proof of service.
	* * * * *

DATE	PROCEEDINGS
7/31/03	Amicus Curiae Professors of Law in 03-2235 brief filed with proof of service.
	* * * * *
8/4/03	Amicus Curiae Center for Constitut in 03-2235 brief filed with proof of service.
8/4/03	Amicus Curiae The Cato in 03-2235 brief filed with proof of service.
	* * * * *
8/4/03	Order FILED GRANTING motion to file brief as amicus curiae [2391412-1] by Amicus Curiae Center for Constitut, endorsed on motion form dated 7/25/03., GRANTING motion for leave to file oversized brief [2391412-2] by Amicus Curiae Center for Constitut, endorsed on motion form dated 7/25/03. (Before: RCW)(By:LBP)
	* * * * *
8/12/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 brief filed with proof of service.

DATE	PROCEEDINGS
8/12/03	Appellant-Cross-Appellee USA in 03-2235, Appellant-Cross-Appellee George W. Bush in 03-2235, Appellant-Cross-Appellee Donald H. Rumsfeld in 03-2235, Appellant-Cross-Appellee M. A. Marr in 03-2235 brief FILED with proof of service.
	* * * * *
8/19/03	Movant Public Defender Service in 03-2235 motion to file brief as amicus curiae FILED (w/pfs). [2408944-1]
	* * * * *
8/20/03	Amicus Curiae Sparticist League in 03-2235 brief filed with proof of service.
8/20/03	Amicus Curiae Association for the in 03-2235 brief filed with proof of service.
8/20/03	Amicus Curiae John J. Gibbons, et al, in 03-2235, Amicus brief filed with proof of service.
	* * * * *
8/21/03	Amicus Curiae Public Defender Service in 03-2235 brief filed with proof of service.
	* * * * *

DATE	PROCEEDINGS
8/21/03	Amicus Curiae Washington Legal in 03-2235, Amicus Curiae Allied Educational in 03-2235, Amicus Curiae Walter Jones in 03-2235, Amicus Curiae Lamar Smith in 03-2235, Amicus Curiae John Sweeney in 03-2235 brief filed with proof of service.
	* * * * *
8/22/03	Amicus Curiae NACDL in 03-2235, Amicus Curiae NYSACDL in 03-2235 brief filed with proof of service.
	* * * * *
8/26/03	Proposed for argument the week of 11/3/03.
	* * * * *
9/2/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 reply brief received. Problem: motion to file oversized brief pending.

DATE	PROCEEDINGS
9/2/03	Appellant-Cross-Appellee USA in 03-2235, Appellant-Cross-Appellee George W. Bush in 03-2235, Appellant-Cross-Appellee Donald H. Rumsfeld in 03-2235, Appellant-Cross-Appellee M. A. Marr in 03-2235 reply brief filed with proof of service.
9/2/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 motion for leave to file oversized brief FILED (w/pfs). [2419581-1]
9/3/03	* * * ORIGINAL * * * Argument as early as week of 10/13/03.
9/3/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 reply brief filed with proof of service.
9/4/03	Notice to counsel of order filed 9/4/3.
9/4/03	Order FILED GRANTING motion for leave to file oversized brief [2419581-1] by Appellee-Cross-Ap Jose Padilla, endorsed on motion form dated 9/2/03. (AH)
9/9/03	Proposed for argument the week of 11/17/03 A Panel.
9/10/03	Notice to counsel of order filed 9/10/3.

DATE	PROCEEDINGS
9/10/03	Amicus Curiae New York Council in 03-2235 brief filed with proof of service.
	* * * * *
	* * * * *
9/25/03	Appellee-Cross-Appellant Jose Padilla in 03-2235 28(J) letter FILED.
	* * * * *
10/8/03	B PANEL/Set for argument on 11/17/03. [03-2235]
	* * * * *
	* * * * *
10/20/03	03-2235, Amicus Curiae H. Lee Sarokin in 03-2235, Amicus Curiae Harold R. Tyler in 03-2235, Amicus Curiae Donald Francis Donovan in 03-2235, Amicus Curiae Scott Greathead 03-2235, Amicus Curiae Robert E. Juceam in 03-2235, Amicus Curiae Philip Allen Lacovara in 03-2235, Amicus Curiae Robert Todd Lang in 03-2235, Amicus Curiae Robert M. Pennoyer in 03-2235, Amicus Curiae Barbara Paul Robinson min 03-2235, Amicus Curiae William D. Zabel

DATE	PROCEEDINGS
	in 03-2235, Amicus Curiae American Civil in 03-2235, Amicus Curiae New York Civil Liber in 03-2235, Amicus Curiae Experts on the Law in 03-2235, Amicus Curiae NACDL in 03-2235, Amicus Curiae NYSACDL in 03-2235, Amicus Curiae Public Defender Ser in 03-2235, oral argument FILED (w/pfs). [2457949-1]
10/20/03	Amicus Curiae The Cato in 03-2235, Amicus Curiae Center for Constitut in 03-2235, Amicus Curiae John J. Gibbons in 03-2235, Amicus Curiae Nathaniel R. Jones in 03-2235, Curiae Abner Mikva in 03-2235, Amicus Curiae William A. Norris in
10/24/03	Notice to counsel/Parties re: order.
10/24/03	Order FILED GRANTING motion to allow oral argument Padilla 25 minutes, Rumsfeld 40 minutes and Gibbons 15 minutes. [2457949-1] by Appellant-Cross-AUSA, George W. Bush, Donald H. Rumsfeld, M. A. Marr, Amicus

DATE	PROCEEDINGS
	Curiae The Cato, Professors of Law, Center for Constitut, Sparticist League, Partisan Defense Co, Association for the, American Bar Associa, John J. Gibbons, Nathaniel R. Jones, Abner J. Mikva, William A. Norris, H. Lee Sarokin, Harold R. Tyler, Donald Francis Donovan, Scott Greathead, Robert E. Juceam, Philip Allen Lacovara, Robert Todd Lang, Robert M. Pennoyer, Barbara Paul Robinson, William D. Zabel, American Civil, New York Civil Liber, Experts on the Law, Appellee-Cross-ApJose Padilla, Amicus Curiae NACDL, NYSACDL, Public Defender Ser, Washington Legal, Allied Educational, Walter Jones, Lamar Smith, John Sweeney, New York Council, endorsed on motion form dated 10/20/03.
10/30/03	Order filed stating " The Court directs the Attorneys for the respondent, Secretary of Defense Donald Rumsfeld, to produce copies of the sealed declarations of Special Advisor to the Under

DATE	PROCEEDINGS
	Secretary of Defense for Policy Michael II Mobbs and Vice Admiral Lowell E. Jacoby for the Court's reveiw on or before November 10, 2003. (FG)
11/1/03	Letter received from AUSA Eric Bruce, in response to this Court's order of 10/30/03.
11/5/03	REVISED Set for argument on 11/17/03, Ceremonial Courtroom, 500 Pearl St., 9th Floor. (10am) [03-2235, 03-2438]
11/7/03	Order filed stating: The parties are directed to divide its forty-minutes argument time as follows: see original order for additional information, FOR THE COURT (CA)
11/7/03	Notice to counsel order dated 11/7/03.
11/7/03	Order filed stating "The request made in the letter dated November 3, 2003 not to review the sealed declarations of Michael H. Mobbs and Vice Admiral Lowell E. Jacoby unless counsel for Padilla are also allowed access to these declarations is hereby DENIED".

DATE	PROCEEDINGS
11/7/03	Letter dated 11/3/03 received from attorney Newman which requests the Court not review sealed declarations of Michael Mobbs and Vice Admiral Lowell E. Jacoby.
11/10/03	Notice to counsel/parties re: order,
11/12/03	Letter dated 11/12/03 received from attorney Donna Newman advising court of how petitioner will proceed at oral argument, in light of this Court's order of 10/23/03.
11/13/03	Order filed in response to Attorney Donna Newman's Faxed letter of 11/12/03 (SEE copy of order for complete text) (By: RBM)
11/17/03	Case heard before POOLER, B.D. PARKER, WESLEY, C.JJ. (TAPE: Transcript available)
11/19/03	Letter received from attorney Donna Newman asking for videotape of argument.

DATE	PROCEEDINGS
11/20/03	Order filed stating " . . . The parties are further directed to furnish three copies of all legislative history so identified to the Clerk of the Court for distribution to the panel on or before November 28, 2003 . . ." (SEE COPY .OF ORDER FOR COMPLETE TEXT) (By:RBM) (Before: RSP, BDP, RCW)
11/21/03	Letter received from Aaron Orcutt requesting an oral argument tape. Fee Paid. Forward to Calendar. Receipt # 170773.
11/21/03	Letter received from Hilary Ley requesting an oral argument tape. Fee pd. Forwarded to calender. 170786.
11/26/03	Copy of approved request for transcripts of argument, received.
12/1/03	Papers responding to this Court's order of November 20, 2003 received from Appellant-Cross-Appellee USA in 03-2235, Appellant-Cross-Appellee George W. Bush in Appellant-Cross-Appellee Donald H. Rumsfeld in

DATE	PROCEEDINGS
	03-2235, Appellant-Cross-Appellee M. A. Marr in 03-2235, Appellant-Cross-Appellee USA in 03-2438 received. (Submitted by Deputy Solicitor General Paul D. Clement).
12/3/03	Papers (in response to this Court order of 11/20/03) from Appellant-Cross-Appellee USA in 03-2235, Appellant-Cross-Appellee George W. Bush in Appellant-Cross-Appellee Donald H. Rumsfeld in 03-2235, Appellant-Cross-Appellee M. A. Marr in 03-2235, Appellee-Cross-Appellant Jose Padilla in 03-2235 received.
12/18/03	Judgment of the district court is AFFIRMED in part, REVERSED & REMANDED in part by published signed opinion filed. (RSP, BDP) [03-2235]
12/18/03	Judge Wesley DISSENTING in a separate opinion filed.
12/18/03	Judgment filed. [Entry Date: 12/18/03]
1/9/04	Transcript of of argument of 11/17/03, filed.
1/14/04	Errata sheet re: filed.

DATE	PROCEEDINGS
1/16/04	Appellant-Cross-Appellee M. Marr, Appellant-Cross-Appellee Donald Rumsfeld, Appellant-Cross-Appellee George Bush, et al motion for stay of mandate filed with proof of service.
1/20/04	Appellee-cross-Appellant Jose Padilla opposition to motion for stay filed with proof of service.
1/22/04	Order FILED GRANTING motion for stay by Appellant-Cross-Appellee M. Marr, Appellant-Cross-Appellee United States of America, Appellant-Cross-Appellee George Bush, Appellant-Cross-Appellee Donald Rumsfeld, endorsed on motion dated 1/16/2004
1/22/04	Notice to counsel in re: of order filed 1/22/04
1/23/04	Papers (copy of affidavit in support of motion for stay of mandate, [motion filed 1/16/04]) from APPELLANT-CROSS-APPELLEE United States of America, Donald Rumsfeld, George Bush, M. Marr, received.

DATE	PROCEEDINGS
1/29/04	Notice of filing petition for APPELLANT-CROSS-APPELLEE United States of America, Donald Rumsfeld, George Bush, M. Marr, dated

Docket as of March 04, 2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE PADILLA, DONNA R. NEWMAN, AS NEXT FRIEND OF JOSE PADILLA, PETITIONERS

v.

GEORGE W. BUSH, EX OFFICIO COMMANDER-IN-CHIEF OF US ARMED FORCES; DONALD RUMSFELD, SECRETARY OF DEFENSE; JOHN ASHCROFT, ATTORNEY GENERAL; COMMANDER M. A. MARR, CONSOLIDATED NAVAL BRIG., RESPONDENTS

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Jose Padilla, a citizen of the United States of America, is being held illegally, denied access to legal counsel, and denied access to any Court for the determination of the legality of his detention in violation of his rights under the Constitution of the United States of America. Donna R. Newman, Esq., on behalf of Mr. Padilla as his Next Friend, respectfully requests that this Court issue a Writ of Habeas Corpus.

2. A Petition for Writ of Habeas Corpus was previously filed with this Court. This amended Petition is submitted pursuant to 28 U.S.C. § 2242 and Rule 15 of the Federal Rules of Civil Procedure.

PARTIES

3. Petitioner Jose Padilla is an American Citizen presently incarcerated and unlawfully held by Respondents at the Consolidated Naval Brig in Charleston, South Carolina.

4. Petitioner Donna R. Newman is an attorney duly admitted to practice law in the Southern District of New York. On or about May 15, 2002, Petitioner Donna R. Newman was assigned to represent Petitioner Jose Padilla by Order of the Honorable Chief Judge Michael B. Mukasey.

5. Petitioner Donna R. Newman, seeks relief as "Next Friend" pursuant to the requirements of *Whitmore v. Arkansas*, 495 U.S. 149 (1990) which requires a "next friend" to provide an adequate explanation why the real party in action cannot appear on his own behalf, to be truly dedicated to the best interests of the person on whose behalf she seeks to litigate and for the "next friend" to demonstrate some significant relationship with the real party in interest.

6. In the instant matter, Petitioner Jose Padilla cannot appear because he is detained in the Consolidated Naval Brig in Charleston, South Carolina. Petitioner Jose Padilla cannot sign and verify the Amended Petition as counsel has been denied access to him by the Respondents. Petitioner Jose Padilla is not permitted to send or receive mail. Respondents have not permitted Petitioner Jose Padilla to communicate with anyone else including members of his family. Thus Petitioner is without means or access to file a Petition on his own behalf.

7. Petitioner Donna R. Newman, as counsel to Jose Padilla has a significant relationship with the Petitioner Jose Padilla. After being assigned to represent, Jose Padilla on or about May 15, 2002, Petitioner Donna R. Newman filed and argued motions on his behalf and met with Mr. Padilla at the M.C.C. repeatedly and regularly as his attorney. Before Mr. Padilla was signed over to his current place of detention, Petitioner Donna R. Newman had established a attorney-client relationship with Jose Padilla. She has a professional obligation under the Code of Professional Ethics to zealously represent the best interests of her client. Attorneys have been permitted to act as "next friend." *See Nash v. MacArthur*, 184 F.2d 606 (D.C. Cir. 1950).

8. Respondent Bush is the President of the United States and Commander-in-Chief of the Armed Forces of the United States.

9. Respondent Rumsfeld is the United States Secretary of Defense and Respondent Marr's superior. He determines the conditions under which Petitioner Jose Padilla is held.

10. Respondent M.A. Marr is a Commander in the United States Navy and is in command of the Consolidated Naval Brig in Charleston, South Carolina. Respondent M.A. Marr receives orders with regard to Petitioner's custody from her superiors, including Respondents Bush and Rumsfeld. That Commander Marr could not obey an Order of this Court to release Petitioner Padilla without violating the order of a superior officer and thereby violating the Uniform Code of Military Justice. See 10 U.S.C. § 892.

11. Respondent Ashcroft is the Attorney General of the United States and is the superior to the Agents of the Federal Bureau of Investigation who initially seized Mr. Padilla and who on information and belief continue to interrogate Mr. Padilla in violation of his constitutional rights. Respondent Ashcroft is also the superior to the United States Attorney's Office for the Southern District of New York who, who on information and belief, assisted the Department of Defense in the seizure of Jose Padilla.

JURISDICTION

12. Petitioners bring this action under 28 U.S.C. §§ 2241 and 2442, and invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1651, 2201 and 2202; as well as the under the Fourth, Fifth and Sixth Amendments to the United States Constitution.

13. This Court is empowered under 28 U.S.C. §§ 2241 to grant a Writ of Habeas Corpus and to entertain the Petition filed by Donna R. Newman, as Next Friend under 28 U.S.C. §§ 2242.

VENUE

14. Venue is proper in the United States District Court for the Southern District of New York ("United States Attorney's Office") because this Court has unique familiarity with the facts and circumstances of this case and the resolution of the case does not require Padilla's presence. *See, Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-94, 35 L. Ed. 2d 433, 93 S. Ct. 1123 (1973) (Traditional venue con-

siderations apply to habeas cases; those include (1) where the material events occurred; (2) where records and witnesses pertinent to the claim are likely to be found; (3) the convenience of the forum for respondent and petitioner; and (4) the familiarity of the court with the applicable laws).

STATEMENT OF FACTS

15. On May 8, 2002, Jose Padilla, an American citizen, was arrested by agents of the Federal Bureau of Investigation ["FBI"] at O'Hare Airport in Chicago, Illinois, upon a material witness warrant signed by the Honorable Michael B. Mukasey, Chief Judge of the United States District Court for the Southern District of New York.

16. The Court Order on which Mr. Padilla was arrested had been applied for by the United States Attorney's Office for the Southern District of New York.

17. On information and belief, Petitioner Jose Padilla was transported by agents of the FBI from Chicago to New York.

18. On or about May 15, 2002, Petitioner Jose Padilla appeared before the Honorable Michael B. Mukasey, who assigned Petitioner Donna R. Newman to represent Mr. Padilla pursuant to the Criminal Justice Act. 18 U.S.C. § 3006A.

19. Petitioner Donna R. Newman met repeatedly and regularly with Mr. Padilla when he was being housed in the Metropolitan Correctional Center in New York, a prison operated by Department of Justice, Bureau of Prisons.

20. As an additional part of her representation of Mr. Padilla, Petitioner Donna R. Newman also appeared in court, filed and argued motions, and on his behalf consulted with both members of Mr. Padilla's family and representatives of the Government. She continued to consult with the Government and Mr. Padilla's family in her role as his attorney.

21. The motions filed sought Mr. Padilla's release, asserting his detention was illegal and contrary to his constitutional rights. The United States Attorney's Office for the Southern District of New York filed extensive papers in opposition to Padilla's motions. Judge Mukasey received all submissions and scheduled a hearing on Padilla's motion for June 11, 2002.

22. On information and belief, on or about June 9, 2002, after consulting with the Respondent Ashcroft and a representative of Respondent Rumsfeld, George W. Bush, the President of the United States, acting as Commander-in-Chief, signed an order declaring Jose Padilla to be a "enemy combatant" and directing Respondent Rumsfeld to arrest Mr. Padilla and to detain him indefinitely for interrogation. *See Exhibit A*, transcript of Respondent Ashcroft's June 10, 2002 statement.

23. Despite requests to several government officials, the Government has refused to provide counsel for Respondent Padilla with a copy of the Order the President is reported to have signed. *See Exhibit B*, letters from Donna R. Newman requesting a copy of the Order on which Mr. Padilla was detained by military authorities.

24. On information and belief the term "enemy combatant" is not defined in either the United States Code or in the Uniformed Code of Military Justice.

25. On or about June 9, 2002, Petitioner Jose Padilla was transferred from the custody of the civilian authorities of the Department of Justice to the military authorities at the Consolidated Naval Brig at Charleston, South Carolina.

26. On information and belief, the Consolidated Naval Brig at Charleston, South Carolina is located on a United States Naval base where access is restricted to members of the military and other specifically designated individuals.

27. In the year 2002, the United States District Court for the Southern District of New York has been "opened for business" without interruption.

28. Petitioner Donna R. Newman was informed by representatives of the Department of Defense that she could not visit or speak with Jose Padilla.

29. On information and belief, from May 2002 through the time this Petition was filed a grand jury has been sitting in the Southern District of New York. No member of the United States Attorney's Office for the Southern District of New York has advised Petitioner Donna R. Newman that an indictment has been returned that charges Jose Padilla with any criminal conduct. Nor, on information and belief, has any complaint been filed in the United States District Court for the Southern District of New York that charges Jose Padilla with any criminal conduct.

30. As of the date of this Petition, Mr. Padilla has not been charged with any offense. Nor, according to press reports, are any criminal charges contemplated.

31. Respondent Rumsfeld has stated publicly that it is the Government's intention to detain Mr. Padilla indefinitely to interrogate him.

CLAIMS AS TO THE UNLAWFULNESS OF PETITIONER'S DETENTION

FIRST CLAIM FOR RELIEF
(DUE PROCESS - FOURTH , FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

32. Petitioner incorporate paragraphs 1-28 by reference.

33. It is a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution to hold an American citizen without giving notice of the basis for his detention.

34. By the action described above, Respondents, acting under color of law, have violated and continue to violate the Fourth, Fifth and Sixth Amendments to the United States Constitution. *See e.g., Zadvyadas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects . . . And this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate

constitutional protections . . .") Also see *Ex Parte Milligan*, 71 U.S. 2, 123 (1866) ("[C]itizens of states where the courts are open, if charged with a crime, are guaranteed the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administration of criminal justice; it is not held by sufferance, and cannot be frittered away on pleas of state or political necessity.")

35. There is no authority to detain an American citizen without a finding of probable cause. *See, e.g., United States Ex Rel. Toth v. Quarles*, 350 U.S. 11, 14 (1955) an "assertion of military authority over civilians cannot rest on the President's power as commander-in-chief, or any theory of martial law."

SECOND CLAIM FOR RELIEF
(SUSPENSION OF THE WRIT)

36. Petitioner incorporate paragraphs 1-28 by reference.

37. To the extent the Presidential Order on which Mr. Padilla is held as an "enemy combatant" disallows any challenge to the legality of Mr. Padilla's detention by way of habeas corpus, the Order and its enforcement constitutes an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

THIRD CLAIM FOR RELIEF
(VIOLATION OF POSSE COMITATUS)

38. Petitioner incorporate paragraphs 1-28 reference.

39. The Posse Comitatus Act, 18 U.S.C. § 1385 prohibits Army and Air Force personnel from participating in civilian law enforcement activities. Members of the Army, Navy, Air Force and Marine Corps are prohibited from participating in civilian law enforcement activities by 10 U.S.C. § 375 and as a matter of Department of Defense policy, see Department of Defense Directive 5525.5(C).

40. As the Courts of the United States are opened and no state of martial law exists, it is unlawful for an Jose Padilla, an American citizen to be held by the military at the Consolidated Naval Brig in Charleston, South Carolina.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the relief as follows:

1. Grant Petitioner Donna R. Newman, Next Friend status, as Next Friend of Jose Padilla;
2. Order Respondents to permit counsel to meet and confer with Jose Padilla;
3. Order Respondents to permit Jose Padilla to receive a copy of this Petition;
4. Order Respondents to cease all interrogations of Mr. Padilla, direct of indirect, while this litigation is pending;
5. Order and declare that Mr. Padilla is being held in violation of the Fourth, Fifth and Sixth Amendments to the United States Constitution.
6. To the extent Respondents contest any material factual allegation in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations;
7. Order that Petitioner Jose Padilla be released from Respondents' unlawful custody;
8. In the event that it is determined that venue does not properly lie in the Southern District Court of New York, that this matter be transferred to the appropriate United States District Court.
9. Such other relief as the Court may deem necessary and appropriate.

Dated: June 19, 2002

Respectfully submitted,

Jose Padilla and Donna R. Newman,
as Next Friend

By: DONNA R. NEWMAN
DONNA R. NEWMAN, Esq. [6299]
121 West 27th Street, Suite 1103
New York, New York 10001
212-229-1516

ANDREW G. PATEL
ANDREW G. PATEL, Esq. [4361]
111 Broadway, 13th Floor
New York, New York 10006
212-349-0230

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)
SOUTHERN DISTRICT OF NEW YORK) ss:

DONNA R. NEWMAN being duly sworn depose and say:

1. I am Donna R. Newman, Next Friend for Petitioner Jose Padilla, state under pain and penalty of perjury that to the best of my knowledge and belief, the facts set forth in this Petition are true and correct.

Dated: New York, New York
June 19, 2002

DONNA R. NEWMAN
DONNA R. NEWMAN, Esq. [6299]

Sworn to before me this
19th day of June 2002

/s/
NOTARY PUBLIC

Andrew Patel
Notary Public, State of New York
No. 4829-468
Qualified in Westchester County
Commission Expires August 31, 2005

EXHIBIT A

Transcript of the Attorney General John Ashcroft Regarding the transfer of Abdullah Al Muhajir (Born Jose Padilla) To the Department of Defense as an Enemy Combatant
06/10/02

I am pleased to announce today a significant step forward in the War on Terrorism. We have captured a known terrorist who was exploring a plan to build and explode a radiological dispersion devise, or "dirty bomb," in the United States. I commend the FBI, the CIA, the Defense Department, and the other federal agencies whose cooperation made this possible.

Yesterday, after consultation with the Acting Secretary of Defense and other senior officials, both the Acting Secretary of Defense and I recommended that the President of the United States, in his capacity as commander in chief, determine that Abdullah Al Muhajir, born Jose Padilla, is an enemy combatant who poses a serious and continuing threat to the American people and our national security.

After the determination, Abdullah Al Muhajir was transferred from the custody of the Justice Department to the custody of the Defense Department.

Following serving in prison in the United States in the early 1990s, Jose Padilla referred to himself as Abdullah Al Muhajir. Subsequent to his release from prison, he traveled to Afghanistan and Pakistan. On several occasions in 2001, he met with senior Al Qaeda officials.

While in Afghanistan and Pakistan, Al Muhajir trained with the enemy, including studying how to wire explosive devises and researching radiological dis-

persion devices. Al Qaeda officials knew that as a citizen of the United States, as a citizen of the United States holding a valid U.S. passport, Al Muhajir would be able to travel freely in the U.S. without drawing attention to himself.

The United States government was tracking Abdullah Al Muhajir when, on May the 8th, 2002, this year, he flew from Pakistan into Chicago O'Hare International Airport, where he was placed in the custody of federal law enforcement authorities.

In apprehending Al Muhajir as he sought entry into the United States, we have disrupted an unfolding terrorist plot to attack the United States by exploding a radioactive "dirty bomb."

Now, a radioactive "dirty bomb" involves exploding a conventional bomb that not only kills victims in the immediate vicinity, but also spreads radioactive material that is highly toxic to humans and can cause mass death and injury.

From information available to the United States government, we know that Abdullah Al Muhajir is an Al Qaeda operative and was exploring a plan to build and explode a radioactive "dirty bomb."

Let me be clear: We know from multiple independent and corroborating sources that Abdullah Al Muhajir was closely associated with Al Qaeda and that as an Al Qaeda operative he was involved in planning future terrorist attacks on innocent American civilians in the United States.

The safety of all Americans and the national security interest of the United States require that Abdullah Al Muhajir be detained by the Defense Department as an enemy combatant. In determining that Al Muhajir is an

enemy combatant who legally can be detained by the United States military, we have acted with legal authority both under the laws of war and clear Supreme Court precedent, which establish that the military may detain a United States citizen who has joined the enemy and has entered our country to carry out hostile acts.

Once again, I commend the FBI, the CIA and other agencies involved in capturing Abdullah Al Muhajir before he could act on his deadly plan.

Because of the close cooperation among the FBI, the CIA, Defense Department and other federal agencies, we were able to thwart this terrorist.

To our enemies, I say we will continue to be vigilant against all threats, whether they come from overseas or at home in America. To our citizens, I say we will continue to respect the rule of law while doing everything in our power to prevent terrorist attacks.

EXHIBIT B

DONNA R. NEWMAN

ATTORNEY AT LAW

121 West 27th Street
SUITE 1103
NEW YORK, NY 1001
TEL; (212) 229-1516
FAX: (212) 924-0726
E-MAIL:
donnanewmanlaw@aol.com

8 LOTT STREET
JERSEY CITY, NJ
07306
TEL: (201) 420-5951
FAX: (201) 420-8977

REPLY TO _____

June 17, 2002

Via facsimile to (202) 456-2461
and first class mail
Alberto Gonzalez
Counsel to the President
Executive Office of the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Jose Padilla

Dear Mr. Gonzalez:

I represent Mr. Padilla. I was informed last Monday morning, June 10, 2002, that President George W. Bush signed an Order directing the Department of Defense to take custody of my client from the Department of Justice and detain him at a naval military prison. Demand is hereby made for a copy of that Directive and/or Order. A copy of the document should immediately be sent to me via e-mail *donnanewmanlaw@aol.com)*, facsimile, and first class mail.

I thank you for your immediate attention to this request.

Very truly yours,

/s/ DONNA R. NEWMAN
DONNA R. NEWMAN
DRN/ad

DONNA R. NEWMAN
ATTORNEY AT LAW

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SUITE 1103
NEW YORK, NY 1001
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8 LOTT STREET
JERSEY CITY, NJ
07306
TEL: (201) 420-5951
FAX: (201) 420-8977

REPLY TO _____

June 17, 2002

Via facsimile to (703) 693-7278
and first class mail
Hon. William J. Haynes II
General Counsel of the Department of Defense
1600 Defense Pentagon, Room 3E980
Washington, DC 20301-1600

Re: Jose Padilla

Dear Mr. Haynes:

I represent Mr. Padilla. I was informed last Monday morning, June 10, 2002, that President George W. Bush had signed an Order on Sunday evening, June 9, 2002, directing the Department of Defense to take custody of my client from the Department of Justice and detain him at a naval military prison. Demand is hereby made for a copy of that Directive and/or Order. A copy of the document should immediately be sent to me via e-mail (*donnanewmanlaw@aol.com*), facsimile, and first class mail.

I understand from the media that my client is being held in Charleston, South Carolina in the military brig. I have spoken with a member of your staff who advised that I would not be permitted to consult with my client

in person, by telephone, or by mail. I request official verification of the Department of Defense policy with respect to my contact with Mr. Padilla.

I thank you for your immediate attention to this request.

Very truly yours,

/s/ DONNA R. NEWMAN
DONNA R. NEWMAN
DRN/ad

DONNA R. NEWMAN
ATTORNEY AT LAW

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8 LOTT STREET
JERSEY CITY, NJ
07306
TEL: (201) 420-5951
FAX: (201) 420-8977

REPLY TO _____

June 17, 2002

Via Fax 718-422-1701 and first class mail
AUSA Eric B. Bruce, Esq.
United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007

Re: Jose Padilla

Dear Mr. Bruce:

Demand is hereby made for a copy of the Directive/Order signed by President George W. Bush on June 9, 2002 ordering the Department of Defense to take custody of Mr. Padilla and transfer him to a military prison. Kindly send me a copy of this document via e-mail, facsimile, and first class mail immediately.

Very truly yours,

/s/ DONNA R. NEWMAN
DONNA R. NEWMAN
DRN/ad

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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02 Civ. 4445 (MBM)

JOSE PADILLA, DONNA R. NEWMAN, AS NEXT FRIEND OF JOSE PADILLA, PETITIONERS

v.

GEORGE W. BUSH, DONALD RUMSFELD, JOHN ASHCROFT, COMMANDER M. A. MARR, RESPONDENTS

AFFIDAVIT OF DONNA R. NEWMAN

DONNA R. NEWMAN being duly sworn, deposes and says:

1. I am the attorney of record for Jose Padilla having been assigned to represent him pursuant to the Criminal Justice Act on May 15, 2002. The information contained in this affidavit is based on information and belief, obtained through my review of my file, conversations with the government, law enforcement, and my clients family and friends and where indicated on personal knowledge.
2. Mr. Padilla traveled to Chicago to visit with his son.
3. After visiting his son, he planned to travel to Florida to visit other members of his family.

4. When Mr. Padilla arrived at the airport he was carrying a valid United States Passport. Mr. Padilla was not carrying weapons, explosives or bomb making instructions.

5. At the Chicago airport, he spoke with law enforcement agents for several hours. He politely answered their questions.

6. When Mr. Padilla was told that he was being arrested, he requested an attorney.

7. Mr. Padilla has never been to Washington, D.C. and he has no special knowledge of the Washington, D.C. area.

8. After Mr. Padilla was transferred to the Consolidated Naval Brig in Charleston, South Carolina, I spoke with a legal representative from the Department of Defense. I was informed that I could not visit Mr. Padilla, that his family could not visit him, and that he would not be able to call me or his family. I asked if I could write to Mr. Padilla and I was told that I would be permitted to write to Mr. Padilla. I asked the representative if what I sent to Mr. Padilla would actually be delivered to him. The representative of the Department of Defense to me that he could not give me assurance that anything that I sent to Mr. Padilla would actually be received by him.

Dated: New York, New York
September 24, 2002

Respectfully submitted,

/s/ DONNA R. NEWMAN
DONNA R. NEWMAN

Sworn to before me this
24th day of September, 2002

/s/
NOTARY PUBLIC

Andrew Patel
Notary Public, State of New York
No. 4829-468
Qualified in Westchester County
Commission Expires August 31, 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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02 Civ. 4445 (MBM)

JOSE PADILLA, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

[Filed: Sept. 26, 2002]

ORDER

Michael B. Mukasey, U.S.D.J.

On application by petitioner, and consent of respondent, the statement in the May 8, 2002, affidavit in support of the material witness warrant herein to the effect that petitioner indicated he was unwilling to become a martyr is unsealed.

SO ORDERED:

/s/ MICHAEL B. MUKASEY
MICHAEL B. MUKASEY,
U.S. District Judge

Dated: New York, New York
September 26, 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

02 Civ. 4445 (MBM)

JOSE PADILLA, DONNA R. NEWMAN, AS NEXT FRIEND OF JOSE PADILLA, PETITIONERS

v.

GEORGE W. BUSH, DONALD RUMSFELD, COMMANDER M. A. MARR, RESPONDENTS

AFFIRMATION OF DONNA R. NEWMAN

DONNA R. NEWMAN, Esq. an attorney duly admitted to practice law before the bar of this Court and this State, affirms, under penalties of perjury, as follows:

1. I am the attorney of record for the Petitioner, Jose Padilla.

2. While Mr. Padilla was being held in the Metropolitan Correction Center, I met with him repeatedly.

3. During our meetings, I was able to and did have meaningful and substantive discussions with Mr. Padilla about various aspects of this matter.

WHEREFORE, it is respectfully submitted that this Court should issue the requested Writ of Habeas Corpus.

Dated: New York, New York
November 22, 2002

Respectfully submitted,

/s/ DONNA R. NEWMAN
DONNA R. NEWMAN, 6299
121 West 27th St., Suite 1103
New York, New York 10001

Declaration of Vice Admiral Lowell E. Jacoby (USN) Director of the Defense Intelligence Agency

Pursuant to 28 U.S.C. § 1746, I, Vice Admiral Lowell E. Jacoby, hereby declare that to the best of my knowledge, information, and belief, and under penalty of perjury, the following is true and correct:

Summary

I submit this Declaration for the Court's consideration in the matter of *Jose Padilla v. George W, Bush et al.*, Case No. 02 Civ. 4445, pending in the United States District Court for the Southern District of New York. This Declaration addresses the following topics:

- my qualifications as an intelligence officer and Director of the Defense Intelligence Agency;
- the roles and mission of the Defense Intelligence Agency;
- the intelligence process;
- interrogations as an intelligence tool;
- interrogation techniques;
- use of interrogations in the War on Terrorism;
- intelligence value of Jose Padilla; and
- potential impact of granting Padilla access to counsel.

Based upon information provided to me in the course of my official duties, I am familiar with each of the topics addressed in this Declaration. I am also familiar with the interrogations of Jose Padilla ("Padilla") conducted by agents of the Federal Bureau of Investigation ("FBI") after his detention in Chicago on 8 May 2002 and by agents of the Department of Defense ("DoD")

after DoD took control of Padilla on 9 June 2002. I have not included information obtained from any interrogations in this Declaration, however.

I assess Padilla's potential intelligence value as very high. I also firmly believe that providing Padilla access to counsel risks loss of a critical intelligence resource, resulting in a grave and direct threat to national security.

Experience

I am a Vice Admiral in the United States Navy, with more than 30 years of active federal commissioned service. I currently am the Director of the Defense Intelligence Agency. I report to the Secretary of Defense. In addition to other assignments, I have previously served as the Director of Intelligence (J2) for the Chairman of the Joint Chiefs of Staff; the Director of Intelligence for the Commander of the U.S. Pacific Command; the Commander of the Joint Intelligence Center Pacific; and the Commander of the Office of Naval Intelligence.

I have received the National Intelligence Medal of Achievement from the Director of Central Intelligence. My military decorations include two Defense Distinguished Service Medals, the Navy Distinguished Service Medal, the Defense Superior Service Medal, and two Legions of Merit. I hold a Masters degree in National Security Affairs from the Naval Postgraduate School.

The Defense Intelligence Agency

The Defense Intelligence Agency ("DIA") is a DoD combat support agency with over 7,000 military and civilian employees worldwide. DIA is a component of DoD and an important member of the United States Intelligence Community—a federation of 14 executive

branch agencies and organizations that work separately and cooperatively to conduct intelligence activities necessary to protect the national security of the United States.

DIA activities include collection of information needed by the President and Vice President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities. One of DIA's highest priorities is to collect intelligence on terrorists, including al Qaida members, by interrogation and other means.

The Defense HUMINT Service ("DHS"), under DIA's Directorate for Operations, handles all human-source intelligence collection within DoD.

The Intelligence Process

The security of this Nation and its citizens is dependent upon the United States Government's ability to gather, analyze, and disseminate timely and effective intelligence. DIA has expended considerable efforts to develop effective intelligence techniques.

Generally speaking, the intelligence cycle can be broken down into five basic steps:

1. **Planning and direction.** Senior United States policy makers establish the intelligence requirements for DIA. DIA formulates more specific plans and directions to meet those requirements. Finished intelligence products also generate new requirements.

2. **Collection.** Raw intelligence data can be gathered by various means. Human-Source Intelligence ("HUMINT") is the oldest and historically

the primary method of collecting intelligence. HUMINT includes clandestine acquisition of materials as well as overt collection of information through methods such as interrogation.

3. **Processing and exploitation.** Intelligence data, including human-source reports, must be converted to a form and context to make them more comprehensible to the intelligence analysts and other users.

4. **Analysis and production.** Intelligence analysts absorb the incoming information, evaluate it, and prepare a variety of intelligence products.

5. **Dissemination.** After reviewing intelligence information and correlating it with other information available, analysts typically disseminate finished intelligence to various users.

One critical feature of the intelligence process is that it must be continuous. Any interruption to the intelligence gathering process, especially from an external source, risks mission failure. The timely, effective use of intelligence provides this Nation with the best chance of achieving success in combating terrorism at home and abroad, thus helping to prevent future catastrophic terrorist attacks.

Protecting the specific sources and methods used during the intelligence process is of paramount importance to the integrity of the process. DIA employs all available safeguards to ensure that its sources and methods are not intentionally or inadvertently made public or disclosed outside the Intelligence Community, because of the resulting damage to intelligence collection efforts.

Interrogation as an Intelligence Tool

Interrogation is a fundamental tool used in the gathering of intelligence. Interrogation is the art of questioning and examining a source to obtain the maximum amount of usable, reliable information in the least amount of time to meet intelligence requirements. Sources may include insurgents, enemy combatants, defectors, refugees, displaced persons, agents, suspected agents, or others.

Interrogations are vital in all combat operations, regardless of the intensity of conflict. Interrogation permits the collection of information from sources with direct knowledge of, among other things, plans, locations, and persons seeking to do harm to the United States and its citizens. When done effectively, interrogation provides information that likely could not be gained from any other source. Interrogations can provide information on almost any topic of intelligence interest.

The Department of the Army's Field Manual governing Intelligence Interrogation, FM 34-52, dated 28 September 1992, provides several examples of the importance of interrogations in gathering intelligence. The Manual cites, for example, the United States General Board on Intelligence survey of nearly 80 intelligence units after World War II. Based upon those surveys, the Board estimated that 43 percent of all intelligence produced in the European theater of operations was from HUMINT, and 84 percent of the HUMINT was from interrogation. The majority of those surveyed agreed that interrogation was the most valuable of all collection operations.

The Army Field Manual also notes that during OPERATION DESERT STORM, DoD interrogators collected information that, among other things, helped to:

- develop a plan to breach Iraqi defensive belts;
- confirm Iraqi supply-line interdiction by coalition air strikes;
- identify diminishing Iraqi troop morale; and
- identify a United States Prisoner of War captured during the battle of Kafji.

Interrogation Techniques

DIA's approach to interrogation is largely dependent upon creating an atmosphere of dependency and trust between the subject and interrogator. Developing the kind of relationship of trust and dependency necessary for effective interrogations is a process that can take a significant amount of time. There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months, or, even years, after the interrogation process began.

Anything that threatens the perceived dependency and trust between the subject and interrogator directly threatens the value of interrogation as an intelligence gathering tool. Even seemingly minor interruptions can have profound psychological impacts on the delicate subject-interrogator relationship. Any insertion of counsel into the subject-interrogator relationship, for example—even if only for a limited duration or for a specific purpose—can undo months of work and may permanently shut down the interrogation process. Therefore, it is critical to minimize external influences

on the interrogation process. Indeed, foreign governments have used these techniques against captured DoD personnel.

Even the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949—which the President has determined does not apply to enemy combatants such as Padilla—recognizes that a detainee's ability to communicate with members of his or her family or government may be suspended when such a person is suspected of engaging in activities hostile to the security of the detaining State.

Use of Interrogations in the War on Terrorism

Terrorism poses an asymmetric threat to the United States. "Asymmetric warfare" generally consists of unanticipated or non-traditional approaches to circumvent or undermine an adversary's strengths while exploiting its vulnerabilities through unexpected technologies or innovative means. "Asymmetric warfare" may also consist of leveraging inferior tactical or operational strength against American vulnerabilities to achieve disproportionate effect with the aim of undermining American will in order to achieve the asymmetric actor's strategic objectives.

Unlike any previous conflict, we face a foe that knows no borders and perceives all Americans, wherever they may be, as targets of opportunity. Our terrorist enemies have also clearly demonstrated their willingness—and in fact have expressed their intent—to use any type of potential weapon, including weapons of mass destruction.

This asymmetric threat creates difficult and unique challenges for DIA because of the many variables in identifying and addressing the threat. The complexi-

ties of the problem—and the dire consequences at stake—require innovative and aggressive solutions.

As explained above, the intelligence cycle is continuous. This dynamic is especially important in the War on Terrorism. There is a constant need to ask detainees new lines of questions as additional detainees are taken into custody and new information is obtained from them and from other intelligence-gathering methods. Thus, it is vitally important to maintain an ongoing intelligence process, including interrogations.

The United States is now engaged in a robust program of interrogating individuals who have been identified as enemy combatants in the War on Terrorism. These enemy combatants hold critical information about our enemy and its planned attacks against the United States that is vital to our national security.

These interrogations have been conducted at many locations worldwide by personnel from DIA and other organizations in the Intelligence Community. The results of these interrogations have provided vital information to the President, military commanders, and others involved in the War on Terrorism. It is estimated that more than 100 additional attacks on the United States and its interests have been thwarted since 11 September 2001 by the effective intelligence gathering efforts of the Intelligence Community and others.

In fact, Padilla's capture and detention were the direct result of such effective intelligence gathering efforts. The information leading to Padilla's capture came from a variety of sources over time, including the interrogation of other detainees. Knowledge of and disruption of al Qaida's plot to detonate a "dirty bomb" or arrange

for other attacks within the United States may not have occurred absent the interrogation techniques described above.

Interrogating members of al Qaida, or those individuals trained by al Qaida, poses additional challenges and risks. Al Qaida is a highly dangerous and sophisticated terrorist organization that has studied and learned many counterintelligence techniques. An al Qaida training manual, "Military Studies in the Jihad Against the Tyrants," provides instructions regarding, among other things: the collection of intelligence; counter-interrogation techniques; and means of covert communication during periods of capture. As detainees collectively increase their knowledge about United States detention facilities and methods of interrogation, the potential risk to national security increases should those methods be released. Moreover, counsel or others given access to detainees could unwittingly provide information to the detainee, or be used by the detainee as a communication tool.

In summary, the War on Terrorism cannot be won without timely, reliable, and abundant intelligence. That intelligence cannot be obtained without robust interrogation efforts. Impairment of the interrogation tool—especially with respect to enemy combatants associated with al Qaida—would undermine our Nation's intelligence gathering efforts, thus jeopardizing the national security of the United States.

Intelligence Value of Jose Padilla

Padilla is currently being detained in the Naval Consolidated Brig, Charleston at Naval Weapons Station, Charleston, South Carolina. The President has determined that Padilla is closely associated with al Qaida, an

international terrorist organization with which the United States is at war. The President has further determined that Padilla possesses intelligence, including intelligence about personnel and activities of al Qaida, that, if communicated to the United States, would aid our efforts to prevent further attacks by al Qaida on the United States, its armed forces, other government personnel, or its citizens.

Padilla has been implicated in several plots to carry out attacks against the United States, including the possible use of a "dirty" radiological bomb in Washington DC or elsewhere, and the possible detonation of explosives in hotel rooms, gas stations, and train stations.

As noted in the unclassified Declaration of Michael H. Mobbs, Special Advisor to the Under Secretary of Defense for Policy, dated 27 August 2002, Padilla has, among other things:

- met with senior Usama Bin Laden lieutenant Abu Zabaydah in Afghanistan about conducting terrorist operations in the United States;
- conducted research in the construction of a "uranium-enhanced" explosive device at an al Qaida safehouse in Pakistan;
- discussed plans to build and detonate a "radiological dispersal device" (also known as a "dirty bomb") within the United States;
- received training from al Qaida operatives in furtherance of terrorist activities;
- met with other senior al Qaida operatives to discuss Padilla's involvement and participation in terrorist activities targeting the United States; and

- spent time in Afghanistan, Pakistan, Saudi Arabia, Egypt, and Southwest Asia.

Thus, Padilla could potentially provide information about, among other things:

- details on any potential plot to attack the United States in which he has been implicated, including the identities and whereabouts of al Qaida members possibly still at large in the United States and elsewhere;
- additional al Qaida plans to attack the United States, its property, or its citizens;
- al Qaida recruitment;
- al Qaida training;
- al Qaida planning;
- al Qaida operations;
- al Qaida methods;
- al Qaida infrastructure;
- al Qaida capabilities, including potential nuclear capabilities;
- other al Qaida members and sympathizers; and
- al Qaida activities in Afghanistan, Pakistan, Saudi Arabia, Egypt, Southwest Asia, the United States, or elsewhere.

The information that Padilla may be able to provide is time-sensitive and perishable. As noted above, any information obtained from Padilla must be assessed in connection with other intelligence sources; similarly, Padilla is a potential source to help assess information obtained from other sources. Any delay in obtaining

information from Padilla could have the severest consequences for national security and public safety.

Potential Impact of Granting Padilla Access to Counsel

Permitting Padilla any access to counsel may substantially harm our national security interests. As with most detainees, Padilla is unlikely to cooperate if he believes that an attorney will intercede in his detention. DIA's assessment is that Padilla is even more inclined to resist interrogation than most detainees. DIA is aware that Padilla has had extensive experience in the United States criminal justice system and had access to counsel when he was being held as a material witness. These experiences have likely heightened his expectations that counsel will assist him in the interrogation process. Only after such time as Padilla has perceived that help is not on the way can the United States reasonably expect to obtain all possible intelligence information from Padilla.

Because Padilla is likely more attuned to the possibility of counsel intervention than most detainees, I believe that any potential sign of counsel involvement would disrupt our ability to gather intelligence from Padilla. Padilla has been detained without access to counsel for seven months—since the DoD took control of him on 9 June 2002. Providing him access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an adversarial civil litigation process. This would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.

At a minimum, Padilla might delay providing information until he believes that his judicial avenues of relief

have been exhausted. Given the nature of his case, his prior experience in the criminal justice system, and the length of time that has already elapsed since his detention, Padilla might reasonably expect that his judicial avenues of relief may not be exhausted for many months or years.

Moreover, Padilla might harbor the belief that his counsel would be available to assist him at any point and that seven months is not an unprecedented time for him to be without access to counsel.

Any such delay in Padilla's case risks that plans for future attacks will go undetected during that period, and whatever information Padilla may eventually provide will be outdated and more difficult to corroborate.

Additionally, permitting Padilla's counsel to learn what information Padilla may have provided to interrogators, and what information the interrogators may have provided Padilla, unnecessarily risks disclosure of the intelligence sources and methods being employed in the War on Terrorism.

In summary, the United States has an urgent and critical national security need to determine what Padilla knows. Padilla may hold extremely valuable information for the short-term and long-term security of the United States. Providing Padilla access to counsel risks the loss of a critical intelligence resource, and could affect our ability to detain other high value

terrorist targets and to disrupt and prevent additional terrorist attacks.

/s/ LOWELL E. JACOBY
LOWELL E. JACOBY, VADM, USN
Director of the Defense
Intelligence Agency

Executed on 9 January 2003